IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3429 of 2001

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

REVABEN CHANDULAL

Appearance:

MR SUNIL B PARIKH for Appellant

MR KISHOR M PAUL for Respondents No. 1-2

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. We have heard the learned counsel for the appellant Insurance Company and learned counsel for respondent nos.1 and 2 (original claimants).

2. Appeal admitted. Mr. Kishor M. Paul appears on behalf of respondent nos.1 and 2 - original claimants and waives service of notice in the appeal.

3. On a joint request the appeal is taken up for hearing today.

4. This is an appeal under section 173 of the Motor Vehicles Act, at the instance of the Insurance Company challenging the judgement and award passed by the Motor Accident Claims Tribunal (Auxi.) at Gondal in Claim Case No.745/89, passed under section 168 of the said Act.

5. As a result of the hearing and discussion a consensus has been arrived at between the learned counsel on the basis of which the only question which requires consideration in the present appeal is the apportionment of contributory negligence between the driver of the fiat car (on account of whose death the claim petition arose) and the driver of the truck in question.

6. For the purpose of determining the question of respective degree of contributory negligence, we have heard the learned counsel for the respective parties, perused the impugned judgement and award, and have also referred to such evidentiary material on record to which our attention has been drawn.

7. As a result of this exercise, learned counsel for the respective parties agree and state before the Court that the question of the relative proportion of contributory negligence on the part of the two drivers may be decided by the court, without the necessity of giving reasons therefor.

8. In the light of the aforesaid consensus, we have applied our minds to the facts of the case and the evidence on record. In this context we find and hold that the driver of the fiat car (on account of whose death the claim petition was filed by respondent nos.1 and 2) was contributory to the accident to the extent of 35%, and the driver of the other vehicle viz. the truck was contributory to the extent of 65%.

9. Accordingly, the impugned judgement and award are modified only to the aforesaid extent, and the rest of the award stands confirmed. It is clarified that the

aggregate amount of compensation as determined by the Tribunal as being due and payable to the original claimants is not disturbed.

10. This appeal is accordingly partly allowed with no order as to costs. Decree accordingly.

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